



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 27, 2023

PUBLIC ACCESS OPINION 23-017
(Request for Review 2023 PAC 78419)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Mr. Dennis Both
American Kitchen Delights
15320 Cooper Avenue
Harvey, Illinois 60426

Ms. Cheryl Anderson
Deputy City Clerk
City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426

Dear Mr. Both and Ms. Anderson:

This binding opinion is issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2022)). For the reasons discussed below, this office concludes that the City of Harvey (City) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2022)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Mr. Shahnawaz Hasan.

BACKGROUND

On August 31, 2023, Mr. Hasan submitted a FOIA request to the City seeking "[a]ny and all documents that identify amounts billed to the City of Harvey by the Law Firm Ancel Glink or Kathleen Kunkle during the period January 1, 2022, to date."¹ The request also sought records identifying real property the City sought to acquire through the Cook County No

¹City of Harvey Illinois Freedom of Information Act (FOIA) Request for Review or Copy of Public Records form submitted by Shahnawaz Hasan (August 31, 2023).

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Cash Bid Program in 2023, as well as related "correspondence, Resolutions Requesting Participation In The Cook County No Cash Bid Program, including any Third Party Requestor Affidavits, Affidavits of Intent, Certifications regarding the No Cash Bid Request, lists or schedules of properties to be acquired and Affidavits of Occupancy."² The FOIA request was stamped as received by the Harvey City Clerk as of August 31, 2023, at 2:22 p.m.³ As contact information, the request listed the mailing address for American Kitchen Delights and an American Kitchen Delights e-mail address for Mr. Dennis Both.⁴

On October 2, 2023, this office received, on behalf of American Kitchen Delights, a Request for Review from Mr. Dennis Both in which he alleged that the City had failed to respond to Mr. Hasan's FOIA request.⁵ On December 8, 2023, Mr. Both clarified to this office via telephone that Mr. Hasan is the owner of American Kitchen Delights and submitted the FOIA request on behalf of the company; Mr. Both is an attorney for the company.⁶

On October 10, 2023, the Public Access Bureau e-mailed the FOIA Officer for the City a copy of the Request for Review and a letter asking whether the City had received and responded to Mr. Hasan's FOIA request.⁷ The October 10, 2023, letter also requested that if the City had not yet responded, it do so and provide this office with a copy of its response.⁸ The City did not respond to the Public Access Bureau's October 10, 2023, correspondence.

On October 27, 2023, the Public Access Bureau sent a letter via U.S. Postal Mail to the Deputy City Clerk, Ms. Cheryl Anderson, stating that this office had not received a response to its October 10, 2023, letter, attaching a copy of that letter, and requesting a

²City of Harvey Illinois Freedom of Information Act (FOIA) Request for Review or Copy of Public Records form submitted by Shahnawaz Hasan (August 31, 2023).

³City of Harvey Illinois Freedom of Information Act (FOIA) Request for Review or Copy of Public Records form submitted by Shahnawaz Hasan (August 31, 2023).

⁴City of Harvey Illinois Freedom of Information Act (FOIA) Request for Review or Copy of Public Records form submitted by Shahnawaz Hasan (August 31, 2023).

⁵Letter from Dennis Both, American Kitchen Delights, to Grace Angelos, Assistant Attorney General, Public Access Bureau (September 26, 2023).

⁶Telephone conversation between Dennis Both and Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 8, 2023).

⁷Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Cheryl Anderson, Deputy City Clerk, City of Harvey (October 10, 2023), at 1.

⁸Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Cheryl Anderson, Deputy City Clerk, City of Harvey (October 10, 2023), at 1.

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response.⁹ This office also e-mailed a copy of that correspondence to the City Clerk's e-mail address.¹⁰ The City did not respond to the Public Access Bureau's October 27, 2023, letter.

On November 16, 2023, an Assistant Attorney General (AAG) in the Public Access Bureau called the City Clerk's telephone number but was unable to reach the City's FOIA Officer. On December 1, 2023, this office extended the time for issuing a binding opinion by 30 business days, pursuant to section 9.5(f) of FOIA.¹¹

As of the date of the issuance of this binding opinion, this office has not received confirmation or any indication from the City or Mr. Both that the City has responded to the FOIA request at issue in this matter.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2022). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2022)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2022)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." Section 3(d) of FOIA further provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records

⁹Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Cheryl Anderson, Deputy City Clerk, City of Harvey (October 27, 2023).

¹⁰E-mail from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to cityclerk@cityofharveyil.gov (October 27, 2023).

¹¹Letter from Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Cheryl Anderson, Deputy City Clerk, City of Harvey, and Dennis Both, American Kitchen Delights (December 1, 2023).

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may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

Section 3(e) of FOIA (5 ILCS 140/3(e) (West 2022)) permits a public body to extend its response time by no more than five business days for any of seven enumerated reasons. Any additional extension requires a written agreement between the requester and the public body. 5 ILCS 140/3(e) (West 2022).

The City did not respond to Mr. Hasan's August 31, 2023, FOIA request within five business days after its receipt by either complying with the request, extending the time for its response pursuant to section 3(e) of FOIA, or denying the request in writing. The failure of the City to comply with the requisite response procedures violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On August 31, 2023, Mr. Shahnawaz Hasan, on behalf of American Kitchen Delights, submitted a FOIA request to the City of Harvey seeking copies of records relating to billings for two specific law firms and the City's attempts to acquire real property via Cook County's No Cash Bid Program.

2) On October 2, 2023, Mr. Dennis Both, attorney for American Kitchen Delights, submitted the documents required to file a Request for Review with the Public Access Counselor alleging that the City had not responded to Mr. Hasan's FOIA request. Mr. Both's Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2022)).

3) On October 10, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the City along with a letter asking whether the City had responded to Mr. Hasan's FOIA request. The City did not respond.

4) On October 27, 2023, the Public Access Bureau sent a second letter to the City's FOIA officer, via both e-mail and U.S. Postal Mail, stating that the Public Access Bureau had not received any indication that the City had responded to Mr. Hasan's FOIA request. The City did not respond.

5) On November 16, 2023, the Public Access Bureau attempted unsuccessfully to reach the City's FOIA officer via telephone.

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6) On December 1, 2023, the Public Access Bureau extended the time in which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) As of the date of the issuance of this binding opinion, this office has received no information indicating that the City has responded to Mr. Hasan's August 31, 2023, FOIA request.

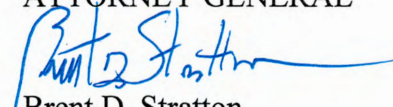
Therefore, it is the opinion of the Attorney General that the City of Harvey has violated section 3(d) of FOIA by failing, within the statutory time for responding to Mr. Hasan's August 31, 2023, FOIA request, to provide copies of the requested records or to deny the request in writing in whole or in part. Accordingly, the City is hereby directed to take immediate and appropriate action to comply with this opinion by providing Mr. Hasan with copies of all records responsive to the August 31, 2023, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2022), as amended by Public Acts 103-154, effective June 30, 2023; 103-462, effective August 4, 2023; 103-446, effective August 4, 2023).¹² If the City determines that any portion of the responsive records is exempt from disclosure under section 7, it is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2022)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Dennis Both as defendants. *See* 5 ILCS 140/11.5 (West 2022).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

¹²Because the City did not comply with the statutory requirements for responding to Mr. Hasan's FOIA request, the City is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2022).

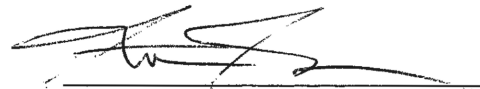
CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-017) upon:

Mr. Dennis Both
American Kitchen Delights
15320 Cooper Avenue
Harvey, Illinois 60426
dbboth@akdi.com

Ms. Cheryl Anderson
Deputy City Clerk
City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426
cityclerk@cityofharveyil.gov

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on December 27, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
Public Access Bureau
Office of the Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-6756